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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**

Case #: CWA - 203569

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on October 28, 2021, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support regarding Medical Assistance (MA), a hearing was held on January 6, 2022, by telephone. The hearing was first scheduled to occur by telephone on December 14, 2021. Both parties, the administrative law judge, and a Spanish-English language interpreter connected to the hearing at that time but were unable to maintain a working connection. Accordingly, the hearing was rescheduled.

The issue for determination is whether Petitioner is entitled to authorization for IRIS coverage of WIN nursing services.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED]  
Bureau of Long-Term Support  
PO Box 7851  
Madison, WI 53707-7851

**ADMINISTRATIVE LAW JUDGE:**

Teresa A. Perez  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner is a 21-year old resident of Dane County who participates in the IRIS program. First Person Care Consultants is Petitioner's IRIS Consultant Agency.
2. Petitioner has autism and behavioral issues related to trauma. Petitioner uses signs and an augmentative speech device to engage in basic communication but is unable to engage in complex communication.
3. Petitioner has a long-standing and significant fear of going to the doctor's or dentist's office which has at times required him to be sedated, prevented him from entering medical settings, and required him to obtain health care treatment in his home.
4. In September 2021, Petitioner's parents, who are also his legal guardians, requested authorization for two hours per month of Wellness Inclusion Nursing (WIN) services for Petitioner. Their goals included, in part, having a nurse enter the home to take Petitioner's vital signs and to monitor his health and to, in turn, reduce the amount of time he would need to spend at in-office medical appointments.
5. The Prior Authorization (PA) request was reviewed by IRIS Nurse Consultant, [REDACTED]. As a result of that consultation, First Person Care Consultants sent Petitioner a written Notice of Action (NOA), denying the request for WIN services. The NOA stated, in part: This request has been denied because it does not fall under the definition of skilled nursing services. . . The nursing services provided must occur within the scope of the Wisconsin Nurse Practice Act and not otherwise available to the participant under the Medicaid State Plan or federal Medicare . . . The needs identified on the nursing service request are move of a medical model that needs to be addressed by a physician and not a nursing model that requires a nurse . . ."
6. The NOA identified various alternatives including an assessment for services through a visiting physician. Petitioner's parents believe a visiting physician who would examine and treat Petitioner is a good alternative and are interested in pursuing that service.

### **DISCUSSION**

The Include, Respect, I Self-Direct (IRIS) program is a Medical Assistance long term care waiver program that serves elderly individuals and adults with physical and developmental disabilities. IRIS is an alternative to Family Care, Partnership, and PACE—all of which are managed long term care waiver programs. The IRIS program, in contrast, is designed to allow participants to direct their own care and to hire and direct their own workers. The broad purpose of all of these programs, including IRIS, is to help participants design and implement home and community based services as an alternative to institutional care. See *IRIS Policy Manual §1.1B* (available at <https://www.dhs.wisconsin.gov/publications/p0/p00708.pdf>).

The IRIS waiver application most recently approved by the Centers for Medicare and Medicaid Services (CMS) is available on-line at <https://www.dhs.wisconsin.gov/iris/hcbw.pdf>. See *Application for 1915(c) HCBS Waiver: WI.0484.R03.00 - Jan 01, 2021*. State policies governing administration of the IRIS program are included in the *IRIS Policy Manual* (available at <http://www.dhs.wisconsin.gov/publications/P0/P00708.pdf>), *IRIS Work Instructions* (available at <http://www.dhs.wisconsin.gov/publications/P0/P00708a.pdf>), and *IRIS Service Definition Manual* (available at <https://www.dhs.wisconsin.gov/publications/p00708b.pdf>).

Nursing services, under the approved waiver, may be covered for IRIS participants. The waiver application provides the following description of nursing services and the conditions that must be met prior to obtaining coverage:

Nursing Services is “professional nursing” as defined in Wisconsin’s Nurse Practice Act, Wis. Stat. § 441. Nursing services are medically necessary, skilled nursing services that may only be provided safely and effectively by an advanced practice nurse, a registered nurse, or a licensed practical nurse who is working under the supervision of a registered nurse.

The nursing services provided must be within the scope of the Wisconsin Nurse Practice Act, consistent with the participant's self-directed Individual Support and Service Plan (ISSP), and not otherwise available to the member under the Medicaid state plan or through Medicare.

Professional skilled nursing means the observation or care of the ill, injured, or infirm, or for the maintenance of health or prevention of illness of others, that requires substantial nursing skill, knowledge, training, or application of nursing principles based on biological, physical, and social sciences.

Nursing services may include periodic assessment of the participant’s medical condition when the condition requires a skilled nurse to identify and evaluate the need for medical intervention or monitor and/or modify the medical treatment services provided by non-professional care providers. Services may also include regular, ongoing monitoring of a participant’s fragile or complex medical condition as well as the monitoring of a participant who has a history of non-adherence with medication or other medical treatment needs.

Delegation of nursing tasks to less skilled personnel shall be in accordance with Wis. Stat. § 441, Wis. Admin. Code § N 6, and the Wisconsin Nurses Association’s Guidelines for Registered Nurse Delegation to Unlicensed Assistive Personnel.

These services are provided when nursing services identified as needed in a participant’s plan of care and furnished under the approved Medicaid State Plan or through Medicare and plan limits are exhausted or when nursing services are not covered under the Medicaid State Plan or through Medicare.

This service may not duplicate services otherwise provided through the Medicaid State Plan or under another waiver service category.

At hearing, Petitioner’s parents indicated that IRIS program staff had misunderstood the reasons motivating the request for nursing services. For example, IRIS staff indicated that Petitioner’s anxiety regarding medical settings was a more recent development. Petitioner’s parents clarified that this has been a long-standing struggle for Petitioner. Petitioner’s parents observed that during the pandemic, a public health nurse who came to their home was able after two to three visits, to gain Petitioner’s trust and ultimately administer him a vaccine against Covid. They also observed that the public health nurse was able to take Petitioner’s vital signs and check in on how he was doing while Petitioner was in a more comfortable setting. Moreover, at hearing, Petitioner’s father agreed that Visiting Physicians might be the best option for Petitioner.

It appears the IRIS Consultant Agency and Petitioner’s parents agree that it makes the best sense to pursue services from Visiting Physicians for Petitioner at this point. For whatever reason, prior to the hearing, the parties apparently did not communicate clearly with one another. Based on the apparent consensus that Visiting Physicians rather than nursing services would be the best option for Petitioner, I

am going to dismiss Petitioner's appeal at this time. This decision does not preclude Petitioner from filing another request for nursing services in the future in the event that services through Visiting Physicians turn out to be unavailable to or unsuitable for Petitioner.

### **CONCLUSIONS OF LAW**

There is insufficient evidence to establish that Petitioner is entitled to nursing services at this time.

**THEREFORE, it is**

**ORDERED**

Petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5<sup>th</sup> Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

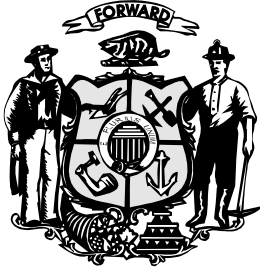
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 4th day of February, 2022

  
/s

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Teresa A. Perez  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 4, 2022.

Bureau of Long-Term Support